Due service of the within Statement is hereby acknowledged this .....day of April, A. D. 1931.

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Attorneys for Appellees.

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APR 30

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1930.

No. [redacted] 43

Bandini Petroleum Company, a corporation; Commodore Petroleum Company, a corporation; Wilshire Oil Company, Inc., a corporation; Wilshire Annex Oil Company, a corporation; and Ambassador Petroleum Company, a corporation,

Petitioners and Appellants,

vs.

The Superior Court of the State of California, in and for the County of Los Angeles, and Honorable William Hazlett, as one of the judges thereof,

Respondents and Appellees.

SUPPLEMENT TO APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM, INCLUDING APPENDICES A AND B, AND PETITION FOR CERTIORARI.

ROBERT V. MURPHEY,
ASA V. CALL
Counsel for Appellants.

Parker, Stone & Baird Co., Law Printers, Los Angeles.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1930.

No. 852.

Bandini Petroleum Company, a corporation; Commodore Petroleum Company, a corporation; Wilshire Oil Company, Inc., a corporation; Wilshire Annex Oil Company, a corporation; and Ambassador Petroleum Company, a corporation,

Petitioners and Appellants,

vs.

The Superior Court of the State of California, in and for the County of Los Angeles, and Honorable William Hazlett, as one of the judges thereof,

Respondents and Appellees.

SUPPLEMENT TO APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM, PETITION FOR WRIT OF CERTIORARI.

Two appendices and a formal petition for writ of certiorari to the District Court of Appeal of the state of California, Second Appellate District, Second Division, are

submitted herewith as an integral part of, and a supplement to, the brief of appellants in opposition to the motion of appellees to dismiss the appeal or affirm the judgment appealed from.

ROBERT V. MURPHEY,
ASA V. CALL
Counsel for Appellants.

APPENDIX "A."

Pertinent Sections Quoted From Gas Conservation Statutes of California, Being Chapter 718, Statutes of 1915, p. 1419, as Amended by Chapter 536, Statutes of 1919, as Amended by Chapter 535, Statutes of 1929, p. 925.

An act to protect the natural resources of petroleum and gas from waste and destruction; relating to the creation of a division in the department of natural resources for the prevention of such waste and destruction; providing for the appointment of a state oil and gas supervisor; prescribing his duties and powers; fixing his compensation; providing for the appointment of deputies and employees; providing for their duties and compensation; providing for the inspection of petroleum and gas wells; requiring all persons operating petroleum and gas wells to make certain reports; permitting and authorizing agreements in the interests of conservation; providing for suits by the director of the department of natural resources in the name of the people of the State of California; providing procedure for arbitration of departmental rulings; creating a fund for the purposes of the act; providing for assessment of charges to be paid by operators and providing for the collection thereof; and making an appropriation for the purposes of this act.

Approved June 10, 1915, Ch. 718; amended 1917, Ch. 759; amended 1919, Ch. 536; amended 1921, Ch. 912; amended 1929, Ch. 535.

The people of the State of California do enact as follows:

SEC. 8b. The unreasonable waste of natural gas by the act, omission, sufferance or insistence of the lessor, lessee or operator of any land containing oil or gas, or both,

whether before or after the removal of gasoline from such natural gas, is hereby declared to be opposed to the public interest and is hereby prohibited and declared to be unlawful. The blowing, release or escape of natural gas into the air shall be *prima facie* evidence of unreasonable waste. (Stats. 1929, p. 927.)

SEC. 8d. Upon complaint being made to the director of natural resources by any person operating in any oil field that there is occurring or threatened an unreasonable waste of gas in any field or fields and a petition is filed with said director requesting that a hearing be held to consider whether such waste is occurring or threatened, and it appearing to the director of natural resources that there is probable cause for such complaint, he shall order the state oil and gas supervisor to hold such a hearing and to fix a time and place therefor; such a hearing may also be ordered by the said director on the application of the state oil and gas supervisor. Notice of the time and place of said hearing shall be given by publication in a newspaper printed and published in the county in which the unreasonable waste of gas is alleged to be taking place or to be threatened. Said notice shall also specify the commonly accepted name or a general description of the field or locality in which the unreasonable waste of gas is alleged to be taking place or to be threatened. The place of hearing shall be in the county or in any of the counties in which the unreasonable waste of gas is alleged to be taking place or to be threatened. Such publication shall be daily for five (5) days prior to the time of the hearing. The state oil and gas supervisor shall also send notice by mail to each lessor, lessee or operator of any oil and gas

well in said field so far as the same may be known to him. No failure to send such written notice shall affect the validity of the proceeding. At such hearing all persons interested shall be entitled to be heard and may present testimony either oral or written. All witnesses shall be sworn and a transcript of the proceedings shall be kept by a stenographic reporter. All the provisions of this act in reference to the subpoenaing of witnesses and the taking of depositions shall be applicable to the hearing before the state oil and gas supervisor. Upon the conclusion of said hearing the state oil and gas supervisor shall determine whether or not there is an unreasonable waste of gas in said field, in existence or threatened, and shall also determine the extent to which the waste of gas therein occurring or threatened is unreasonable. If it shall appear that gas is being produced from any oil well or wells in quantities exceeding a reasonable proportion to the amount of oil produced from the same well or wells, even though it is shown that such excess gas is being used in the generation of light, heat, power or other industrial purpose and that there is sufficient other gas available for such uses from other wells in the same or other fields in which the gas produced is not in excess of the amount which bears a reasonable proportion to the amount of oil produced from such other wells and that there are adequate gas-pipe-line connections between such other wells and the place of utilization of such gas the state oil and gas supervisor shall hold that such excess production of gas is unreasonable waste thereof if such holding will not cause an unreasonable waste of gas in any other field. If the waste of gas be found unreasonable an order shall be made

directing that such unreasonable waste of gas shall be discontinued or refrained from to the extent stated in said order. The sale or delivery of gas to another by a lessor, lessee or operator shall be no defense, excuse or reason for any lessor, lessee or operator disobeying an order of the state oil and gas supervisor directing the discontinuance or curtailment of the production of the well or wells from which said gas is being produced where such gas is being unreasonably wasted by such buyer or by the person to whom deliveries are being made. A copy of said order must be posted in a conspicuous place upon the property affected thereby, and said order shall become final five (5) days after such posting unless appealed from as provided in section 9 hereof. (Stats. 1929, p. 928.)

SEC. 9. The lessor, lessee, or any operator or any well owner or the owner of any rig, derrick, or other operating structure, or his or its local agent, must within five (5) days from the date of the service of any order from the supervisor or his chief deputy or field deputy, other than the order contemplated by section 8d hereof, file with the supervisor or his deputy in the district where the property is located, a written statement that the order is not acceptable, and that appeal from said order is taken to the board of commissioners of said district under the provisions of this act, or comply with such order. Any lessor, lessee, or operator affected by an order made pursuant to section 8d hereof may, within five (5) days from the posting of the copy of such order file with the supervisor written appeal therefrom to the board of commissioners of said district under the provisions of this act. Any such appeal shall operate as a stay of any order issued under or pur-

suant to the provisions of this act. Immediately upon filing of such notice of appeal, the deputy supervisor of the district, as secretary *ex officio* of the board of oil and gas commissioners, shall call a meeting of said commissioners to hear and pass upon said appeal. No commissioner shall be disqualified from sitting or acting in any appeal from any order of the state oil and gas supervisor involving the unreasonable waste of gas by reason of the fact that he is an employee of a lessor, lessee or operator who is interested in the oil or gas field affected by such order appealed from. The hearing upon said appeal before said district board of oil and gas commissioners shall be *de novo* and at such place in the district as the commissioners may designate, and within ten days from the taking of such appeal five days' notice in writing shall be given to the appellant of the time and place of such hearing, and for good cause the commissioners may postpone such hearing on the application of appellant, or the state oil and gas supervisor, or the field deputy in said district, for not exceeding five days. The board of commissioners after hearing shall affirm, set aside or modify said order as shall be determined by a majority of the whole board. The decision of said board shall forthwith be filed with the oil and gas supervisor and upon filing shall be final. (Stats. 1929, p. 929.)

SEC. 10. For the purposes of this act, the state shall be divided into five districts, as follows:

District No. 1, including the counties of Los Angeles, Riverside, Orange, San Diego, Imperial, and San Bernardino.

District No. 2, the county of Ventura.

District No. 3, including the counties of Santa Barbara, San Luis Obispo, Monterey, Santa Cruz, San Benito, Santa Clara, Contra Costa, San Mateo, Alameda, and San Francisco.

District No. 4, including the counties of Tulare, Inyo, and Kern.

District No. 5, including the counties of Fresno, Madera, Kings, Mono, Mariposa, Merced and all other counties in California not included in any of said other districts.

There shall be elected, at the times and in the manner hereinafter provided, district oil and gas commissioners for each such districts, as follows: For district number one, five; for district number two, five; for district number three, five; for district number four, seven; for district number five, five.

Said district oil and gas commissioners shall be elected by vote of the companies, individuals, copartnerships or associations, who shall have been assessed, and whose names shall appear on the last record of assessments (next preceding such election) for and on account of the fund in this act provided to be raised, within said districts respectively, said vote to be taken at a meeting to be held in each of said districts, respectively, and on the third Monday in September of each year, such place and the time and details of such meeting to be fixed by the state oil and gas supervisor, and of which meeting at least two weeks previous notice shall have been given by letter addressed to each of said persons, corporations, copartnerships and associations, entitled to vote as aforesaid, at his or its post-office address or principal place of business.

At said meeting each of those entitled to vote as herein provided may be represented by one person holding the written authority of such voter to act for him at such meeting. At said meeting each voter shall be entitled to one vote for each member of the board of district oil and gas commissioners who are required to be selected for such district. In addition thereto, in each district in which five commissioners are to be elected, each voter shall be entitled for each one hundred dollars, or fraction thereof, which said voter shall have paid in accordance with his last assessment hereunder, to cast one vote for the two commissioners who are elected for three years; and in each district in which seven commissioners are to be elected, each voter shall be entitled, for each one hundred dollars, or fraction thereof, which such voter shall have paid in accordance with his last assessment hereunder, to cast one vote for the three commissioners who are elected for three years. In all subsequent elections the qualification of voters in the election of a commissioner shall be the same as in the election of the commissioner whose successor in office is being elected. Said meeting shall select by ballot, by a majority vote of the votes represented, the number of persons as hereinbefore specified to act as district oil and gas commissioners for such district. In any district entitled to seven commissioners, two shall be chosen for a term of one year, two for two years and three for three years. In any district entitled to five commissioners one shall be chosen for a term of one year, two for two years and two for three years. * * * (Stats. 1919, Ch. 536.)

SEC. 14a. When the decision of the state oil and gas supervisor that there is an unreasonable waste of gas

occurring or threatened, shall have become final, a certified copy thereof, or, if modified by the order of the board of commissioners, then a certified copy of the order as modified, shall be filed with the director of the department of natural resources. The director, unless said order is complied with voluntarily, shall have proceedings instituted in the name of the people of the State of California to enjoin unreasonable waste of gas. Such proceeding shall be instituted in the superior court for the county in which the property where the wastage is occurring or is threatened or any part thereof may lie. There may be joined in the same proceedings any number of defendants, although their properties and interests may be severally owned and their actual or threatened unreasonable wastage of gas may be separate and distinct; *provided*, the actual or threatened unreasonable waste by all of the defendants are in or with reference to the same producing or prospective oil or gas field. In such suits no restraining order shall be issued *ex parte* but otherwise the procedure shall be conformable with the provisions of chapter three of title seven of part two of the Code of Civil Procedure of the State of California, and no temporary or permanent injunction issued in such proceedings shall be refused or dissolved or stayed pending appeal upon the giving of any bond or undertaking or otherwise. In such proceedings the findings of the oil and gas supervisor, unless set aside or modified by the board of commissioners, or if so modified then except to the extent so modified, shall constitute *prima facie* evidence of the unreasonable wastage of gas therein found to be occurring or threatened. The judgment of the court shall be appealable by any party in the same manner

as other judgments rendered under said chapter. (Stats. 1929, p. 930.)

SEC. 14b. Whenever it appears to the director of the department of natural resources that the owners, lessors, lessees or operators of any well or wells producing oil and gas or oil or gas are causing or permitting an unreasonable waste of gas, he may institute, or have proceedings instituted, in the name of the people of the State of California, to enjoin such unreasonable waste of gas regardless of whether proceedings have or have not been instituted under section 8 hereof, and regardless of whether an order has or has not been made therein. Such proceedings shall be instituted in the superior court for the county in which the well or wells from which the unreasonable waste of gas is occurring or any thereof are situated. The owners, lessors, lessees, or operators causing or permitting an unreasonable waste of gas in the same oil or gas field, although their properties and interests may be separately owned and their unreasonable waste separate and distinct, may be made parties to said action. In such suits no restraining order shall be issued *ex parte*, but otherwise the procedure shall be governed by the provisions of chapter three, title seven, part two of the Code of Civil Procedure of the State of California and no temporary or permanent injunction issued in such proceedings shall be refused or dissolved or stayed pending appeal upon the giving of any bond or undertaking, or otherwise. (Stats. 1929, p. 930.)

SEC. 21. Any owner or operator of any well referred to in this act, or employee thereof, who refuses to permit the supervisor, or his deputy, or his inspector, to inspect the same, or who wilfully hinders or delays the enforce-

ment of this act, and every person, firm, association, corporation, trust or syndicate, whether as principal, agent, servant, employee or otherwise, violating or failing, neglecting or refusing to comply with any of the provisions of this act, or failing or neglecting or refusing to furnish any report or record which may be required pursuant to the provisions of this act, or who wilfully renders a false or fraudulent report, is guilty of a misdemeanor, and shall be punishable by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment, for each such offense.

SEC. 21a. The charges hereinafter provided for are directed to be levied by the State of California as necessary in the exercise of its police power and to provide a means by which to supervise and protect deposits of petroleum and gas within the State of California, in which deposits the people of the State of California are hereby declared to have a primary and supreme interest.

APPENDIX "B."

Some Notes on the Situation at Santa Fe Springs With Respect to Gas-Oil Ratios, by Dr. Stanley C. Herold of Stanford University, Petroleum Geologist.

Los Angeles, California. March 27, 1930.

In the injunction proceedings against operators of oil and gas wells it is admitted by the state, through its representatives as attorneys and others, that the purpose behind any and all action shall be one of justice equally distributed to all such operators without regard to size of property holdings and amount of capital invested in this field and elsewhere. Such justice is, of course, impossible unless the demands of the injunction are in full accord with the laws of nature. She controls the situation within the productive zones at Santa Fe Springs as well as everywhere else. In the words of Horace, "Drive out Nature with a pitchfork; she will come back every time." As to these laws of nature, many of us hold diverse opinions. I can do no more than to offer my ideas for your consideration along with those of others. Let me state them as concisely as possible:

(1) Each productive zone in the Santa Fe Springs is a reservoir in itself; that is to say, each has its own identity apart from every other zone, regardless of the fact that any well, provided it is properly located, may be caused to produce from any one of them in succession on deepening.

(2) Nature has already established for us the gas-oil ratio in each zone separately.

(3) We may exercise a temporary control over such gas-oil ratios, but we cannot alter the total ultimate yield of gas with respect to the total ultimate yield of oil. The fluids within the pools initially are exactly the fluids to be produced entirely by the time of depletion.

(4) If the gas-oil ratio is lowered at one well or group of wells, either the detained gas will be produced later by the same well or wells, or by another well or group of wells.

(5) Gas detained at wells on the flank of the structure will slip up the dip toward the crest of the structure.

(6) Wells at the crest of the structure must produce with a greater gas-oil ratio than those down the flank.

(7) *In the absence of wells on the crest of the* structure, a large bubble of gas accumulates at such crest. This bubble is one which occupies at most 80 per cent of the pore space in the productive formation; oil occupies the remaining 20 per cent.

(8) Final depletion of the pools means the entire replacement of oil and gas by encroached edgewater.

(9) The compressed gas within each pool is the source of energy which delivers the oil to the bottom of the well, from all directions radially outward, for a short period of time known as the period of flush production.

(10) Water under hydrostatic head, transmitting its pressure through edgewater surrounding the pools, is the source of energy throughout the remaining life of the wells on settled production.

(11) The amount of gas in each pool determines the rate and the amount of flush oil production.

(12) The amount of gas in each pool in no way determines the amount of settled oil production.

(13) The amount of gas in each pool in no way determines the amount of total ultimate oil production from the pool.

(14) The gas lift is a machine apart from the productive zone which is in itself a huge machine. The energy of compressed gas is essential in the successful operation of the lift. Any gas not furnished by the zone can be furnished by an operator's pump to the same effect.

(15) Gas injection increases the rate of oil production at wells in the vicinity of injection. It holds the wells on "flush production." It in no way increases the total ultimate oil production from the pool.

(16) Gas cannot be stored in a producing zone by means of injection so long as wells at the crest of the structure are producing.

(17) Gas can be effectively stored in water-sands which overlie the productive zones.

These are the facts as I see them at Santa Fe Springs. I believe they hold for all productive zones post-Cretaceous in age.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1930.

No. 852.

Bandini Petroleum Company, a corporation; Commodore Petroleum Company, a corporation; Wilshire Oil Company, Inc., a corporation; Wilshire Annex Oil Company, a corporation; and Ambassador Petroleum Company, a corporation,

Petitioners and Appellants,

vs.

The Superior Court of the State of California, in and for the County of Los Angeles, and Honorable William Hazlett, as one of the judges thereof,

Respondents and Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, SECOND DIVISION.

(NOTE: All references to the record are to the typewritten record filed with the Clerk on the appeal proceedings, Case No. 852, Oct. Term, 1930,—the printing of same not yet having been completed.)

May it Please the Court:

The petition of Bandini Petroleum Company, a corporation, Commodore Petroleum Company, a corporation, Wilshire Oil Company, Inc., a corporation, Wilshire Annex Oil Company, a corporation, and Ambassador Petroleum Company, a corporation, respectfully shows:

A. Summary Statement of the Matters Involved.

Petitioners above named hereby apply for a writ of certiorari to review the decision of the District Court of Appeal of the State of California, Second Appellate District, Second Division, in the cause entitled as above [R. 333, 363½] denying the application of petitioners duly presented to that court for a peremptory writ of prohibition [R. 1-327] to prevent the Superior Court of Los Angeles county from enforcing a preliminary injunction against appellants [R. 288], or taking further proceedings against appellants, in an action brought by the State of California. Said action was brought under a statute of that state [see material portions of statute printed herewith as Appendix A], to enjoin the alleged unreasonable waste of natural gas by appellants and others in Santa Fe Springs oil field. This application is made as a motion in the appeal proceedings taken by appellants to this court to review the said decision, Case No. 852, October Term, 1930, and is made upon the record in said case, and upon said appeal proceedings, under sections 237 (b) and (c), United States Judicial Code. (Act of Feb. 13, 1925, ch. 229, sec. 1, 43 Stat. 937; U. S. Code, title 28, sec. 344.) If this court should hold that appeal was improvidently sought and allowed, then petitioners move and pray that the papers whereon the appeal was

allowed be regarded and acted upon as a petition for certiorari and as if duly presented to this court at the time they were presented to the presiding justice of said District Court of Appeal, by whom the appeal was allowed.

An alternative writ of prohibition [R. 328] was issued on April 9, 1930 [R. 327½]. The only return thereto was a demurrer [R. 331]. The opinion of the said District Court of Appeal [R. 333] is not yet officially reported, but is found in the Advance Sheets of said court at 63 Cal. App. Dec. 1175. On December 19, 1930, appellants petitioned said court for a rehearing, which petition was timely filed [R. 364] and was denied by said court on December 27, 1930 [R. 486]. On January 8, 1931, appellants petitioned the Supreme Court of California for an order for a transfer of said cause to, and a hearing by, said court, which petition was timely filed [R. 487], and which was denied by said court on January 26, 1931 [R. 671½], on which date said judgment became final. The appeal to this court was presented to and allowed on January 29, 1931, by the Hon. Lewis R. Works, the presiding justice of said District Court of Appeal [R. 692], which was the highest court in the state in which a decision in the cause could be had.

The suit in which the preliminary injunction above mentioned was issued was commenced in the Superior Court of Los Angeles county, California, on September 11, 1929, by the People of the State of California on relation of Fred G. Stevenot, Director of Natural Resources of said state, as plaintiffs, and against appellants and petitioners herein and the other owners and/or operators of

oil wells in Santa Fe Springs oil field as defendants. The suit was instituted and maintained solely under the supposed authority of sections 8b and 14b of the statute above referred to, which sections were adopted in 1929 [see Appendix A]. A statement of the proceedings in the Superior Court and of the uncontradicted and admitted facts established by the evidence in the Superior Court of the preliminary injunction and of the other facts, are alleged in the petition for writ of prohibition [R. 3-28] a summary of which is set forth in appellants' Statement as to Jurisdiction on Appeal and also in the brief, in the supplement to which this petition is printed, which are hereby referred to and made a part hereof, in the interest of brevity.

Grounds of Jurisdiction, and Federal Questions and Federal Rights Specially Set Up and Claimed.

Your petitioners invoke the jurisdiction of this court to review the said judgment of said District Court of Appeal of the state of California upon writ of certiorari, on the ground that in the said petition for writ of prohibition presented by petitioners to the said state court there was drawn in question not only (1) the validity of the California statute above referred to on the ground of its being repugnant to the Constitution of the United States, but also (2) certain rights of your petitioners specially set up and claimed by them in said petition presented to said District Court of Appeal of the state of California under the "equal protection" and "due process" clauses of the Fourteenth Amendment of the Constitution of the United States, and the impairment of contracts clause in section 10 of Article I of said Constitution.

The federal rights so specially set up and claimed by petitioners are as follows: (a) The right not to have enforced against petitioners a statute which is void for uncertainty and lack of an ascertainable or sufficiently definite standard of conduct to satisfy the requirements of the "due process" and "equal protection" clauses of the Fourteenth Amendment; (b) The right not to be deprived of their property by the state without due process of law; (c) The right to the equal protection of the laws; (d) The right that petitioners' oil and gas lease contracts be not impaired by subsequent state legislation; (e) The right not to have enforced against petitioners a statute creating an arbitrary or unreasonable presumption of petitioners' guilt or violation of the statute; (f) The right not to have a judgment rendered or enforced against petitioners, the necessary effect of which violates the "equal protection" and "due process" clauses of the Fourteenth Amendment and the impairment of contract clauses of section 10 of Article I of the United States Constitution.

The Particulars in Which the California Statute, as Construed and Applied Against Appellants, Is Claimed in the Petition for Writ of Prohibition to Be Repugnant to the Constitution of the United States, and in Which the Statute, as Construed and Applied Against Appellants, Deprives Appellants of Rights, Privileges and Immunities Under the Constitution of the United States, and the References to the Record Showing They Were Specially Set Up and Claimed by Appellants.

At pages 20-25 of the petition for writ of prohibition filed in the lower court [R. 20-25] are set forth the particulars in which the state statute involved violates the Federal Constitution and in which the Superior Court ex-

ceeded, and threatens to exceed, its jurisdiction in enforcing said statute, or proceeding further thereunder against petitioners. Said petition includes, by reference [R. 24, clause *e*], the grounds of unconstitutionality of the statute under the Federal Constitution, as well as the rights asserted under the Federal Constitution, as they are set forth in the answer filed by petitioners in the Superior Court (the allegations and denials of which are incorporated and realleged in the petition for writ of prohibition, R. 6), and also in the demurrer to the complaint [R. 98] and in the points and authorities annexed thereto [R. 114].

These federal questions, and the particular references to the record showing that they were raised, specially set up and claimed, and called to the attention of the lower courts, may be summarized as follows:

1. The California statute, under the supposed authority of which the action in the Superior Court was instituted and the orders of that court were made, is so vague, uncertain and indefinite, as to the definition, guide or standard of what constitutes "unreasonable waste of natural gas," that it violates the "due process" clause of the Fourteenth Amendment of the United States Constitution [R. 21, 99, 115-116, 118, 121, 336, 357], and therefore the orders of the Superior Court complained of, construing and applying the statute to petitioners, and the enforcement thereof, are in excess of the jurisdiction of said Superior Court [R. 20-25, 123].

2. The California statute as construed and applied to and sought to be enforced against petitioners, and also the rendition and enforcement of the preliminary injunc-

tion of the Superior Court, deprives petitioners of their property without "due process" of law, in violation of the Fourteenth Amendment of the United States Constitution, and is in excess of the jurisdiction of said court:

(a) In that, under the uncontradicted and admitted facts, each of petitioners' oil wells is being efficiently operated at a proper and reasonable gas-oil ratio for each well and for the field, and so as not to injuriously affect the rights or operations of other operators or owners in the same field, and the admitted sole purpose of the decrease in the allowed gas production to petitioners required by them in the efficient production of oil as aforesaid, is to reserve such natural gas in the ground for light, heat and power for the benefit of the general consuming public, and that this cannot be accomplished without compensation, nor without a condemnation suit in the exercise of the power of eminent domain. [R. 23, 99, 119-121, 157-159, 164, 178-183, 6-par. 4, 336-357.]

(b) In that, under the admitted facts, the extent of the invasion of petitioners' property rights is so great, so arbitrary, so unreasonable, so oppressive, and so unrelated to and in excess of the power of the state, that it cannot be sustained under the police power of the state, but the due process clause of the Federal Constitution requires the exercise of the power of eminent domain. [R. 6, 23-24, 100, 159-164, 166, 180, 183, 336-357.]

(c) In that the *"prima facie"* evidence clause of the statute violates the due process clause of the Fourteenth Amendment. [R. 24, 115, 124, 125.]

3. The California statute as construed and applied to and sought to be enforced against appellants, impairs

the obligations of the oil and gas lease contracts of appellants requiring diligent drilling and operation, and in two instances to "maximum capacity," under penalty of forfeiture, all in violation of section 10 of article I of the United States Constitution. [R. 24, 6, 100, 120, 178, 182.]

4. The statute of California as construed and applied to and sought to be enforced against appellants, denies to appellants the "equal protection of the laws" guaranteed to appellants by the Fourteenth Amendment of the United States Constitution. [R. 24, 6, 121-2, 160-166.]

5. The necessary effect of the preliminary injunction against petitioners is to deprive petitioners of their property without due process of law, and to deny them the equal protection of the laws, all in violation of the Fourteenth Amendment. [R. 23-24, pages cited under items 1 to 4, *supra.*]

Not only do the foregoing references to the *record itself* show that these federal questions were presented to the lower court in the petition for writ of prohibition, as well as in the proceedings in the Superior Court forming the basis for the writ of prohibition, but the record also includes a certificate of the lower court [R. 714], and also a stipulation of counsel [R. 718], to the effect that each of the federal questions set forth in the assignment of errors in this court [R. 676] were duly, regularly, properly and timely raised and specifically set up and claimed by appellants in the lower court, all in accordance with the laws, rules of court and the practice prevailing in California, and the validity of the statute was sustained as against each and all of the various

claims of appellants of its being repugnant to the Constitution of the United States. [R. 714-717.] This certificate of the court recites:

> "That each of said questions was duly considered by this court on its merits, and the contentions of appellants respecting each of said questions were each and all denied; that a decision upon each of said questions and claims of the appellants was necessary to the decision and judgment of this court filed November 29, 1930." [R. 716.]

Although appellants are not dependent on such certificate, it may be considered and should remove all doubt. (*Consolidated Turnpike Co. v. Norfolk etc. Ry. Co.*, 228 U. S. 596, 57 L. Ed. 982; Marvin v. Trout, 199 U. S. 212, 50 L. Ed. 157.) The record also contains a topical index of appellants' brief in the lower court [R. 724], the petition for rehearing [R. 364] and the petition for hearing by the Supreme Court of California [R. 487], all showing these federal questions again raised. The California practice does not recognize an assignment of errors; it merely requires a "printed" brief containing the points and authorities, "relied on," with a "topical index" if same is more than 30 pages long. (See *New York ex rel. Bryant*, 278 U. S. 63, 68, 73 L. Ed. 184, 187.)

The opinion of the lower court itself, which for present purposes is deemed part of the record (*N. Y. ex rel. Bryant, supra*) shows that that court considered these federal questions as properly raised [R. 333-6], and expressly passed on all of them adversely to appellants' claims, [R. 336], except as to one or two, where such was the necessary effect of the judgment. See Point C of Appellants' Brief in Opposition to Motions to Dismiss or Affirm.

ASSIGNMENT OF ERRORS.

Petitioners adopt the Assignment of Errors, filed on the appeal proceedings [R. 676-685].

B. Reasons Relied Upon for the Allowance of the Writ.

The reasons upon which your petitioners rely for the allowance of the writ sought herein are:

1. Substantial federal questions are presented relating to the exercise by a state of its powers, and to the limitations which are imposed thereon by the Fourteenth Amendment, and by Section 10 of Article 1, of the United States Constitution.

2. It is believed that the decision of the lower court on the federal questions presented are not in accord with the previous decisions of this court deemed applicable, or, if such decisions are not applicable, that such questions have not heretofore been determined by this court.

3. It is believed to be of great importance and of widespread interest that this court should determine (a) the guiding principles and the extent to which a state may go in limiting the production of oil and gas, and particularly (b) whether a state has the power to conserve privately owned natural resources within the state for the benefit of the general public and deprive the private owners of the use and benefit thereof without compensation, and (c) whether the legislative power of the state extends to any greater limit than regulating and protecting private correlative rights in a common or overlapping source of supply as against waste or other conduct by one or more of the surface owners or operators which

injuriously affects the private rights of other surface owners or operators; also (d) the extent of the state's power to limit the production of privately owned natural resources on the ground of economic waste or for commercial or other reasons; (e) whether a state legislature must define what is prohibited in its attempted regulations on the subject, with sufficient certainty that those to whom the same are directed may know in advance what is permitted or prohibited; (f) whether it can create arbitrary and unreasonable statutory presumptions of guilt or violation of the law; and (g) other important federal questions.

4. These questions are of general interest and concern to all producers of oil and gas throughout the oil producing states at this time, and are also matters in which the federal administration has taken some interest. Sundry oil and gas legislation is pending in the legislatures of various oil producing states and there are widely divergent views as to the state's power in the premises, which would be largely authoritatively cleared up by a decision on the above federal questions. An effort is being made through different sources to devise uniform state legislation, and to limit the oil and gas production in the nation, as well as imports of oil from foreign countries, and for the proration (as distinguished from conservation) of the allowed national production amongst states, and allocating the production of each state amongst various fields, and, in turn, amongst the various properties, leases and wells in the various fields.

No separate brief is filed in support of this petition, it being believed that the brief on the appeal proceedings, and the decisions therein relied on, do not make it necessary.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued by, and under the seal of, this Honorable Court directed to the District Court of Appeal of the state of California, Second Appellate District, Second Division, commanding said court to certify and send to this court on a day certain to be therein designated a full and complete transcript of the record in said proceeding, to the end that the errors of which your petitioners complain herein may be reviewed and corrected by this court conformably to law.

Dated April 25, 1931.

BANDINI PETROLEUM COMPANY,
COMMODORE PETROLEUM COMPANY,
WILSHIRE OIL COMPANY, INC.,
WILSHIRE ANNEX OIL COMPANY,
AMBASSADOR PETROLEUM COMPANY,
Petitioners,

By ROBERT B. MURPHEY,
ASA V. CALL,
Counsel for Petitioners.